IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 379 of 1992

with

CRIMINAL REVISION APPLICATION No 335 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

CHHAGANBHAI GOVINDBHAI

Appearance:

Shri M.A. Bukhari, Additional Public Prosecutor, for the Appellant-State (in Appeal)

Shri K.I. Shah, Advocate, for the Petitioner (in Revision) (absent)

Kum. R.V. Acharya, Advocate, for the Respondent-accused (in both matters) (appointed)

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 08/10/96

ORAL JUDGEMENT

The adequacy of the sentence passed by the learned Additional Sessions Judge at Surat on 30th August 1991 in Criminal Appeal No. 2 of 1988 is under challenge in this appeal under sec. 377 of the Code of Criminal Procedure, 1973 (the Code for brief). Thereby the learned Additional Sessions Judge reduced the sentence imposed by the Judicial Magistrate (First Class) at Surat by his order passed on 11th December 1987 in Criminal Case No. 47 of 1984 from rigorous imprisonment for one year and fine of Rs. 2000/- in default imprisonment for 15 days more to rigorous imprisonment for 7 days and fine of Rs. 2000 in default rigorous imprisonment for 15 days for the offence punishable under sec. 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (the Act for brief).

2. The facts giving rise to this appeal move in a narrow compass. The Food Inspector of the concerned area purchased 7 decilitre of milk from the respondent-accused. It would be equivalent to 700 milli-litre. It was divided in three equal parts. 19 drops of formalin of 40% strength were added to each part of the sample. This was done in accordance with the relevant provisions contained in the Act and the Rules framed thereunder. One sample bottle was sent to the Public Analyst at Surat for analysis and report. It was found to be adulterated. Thereupon the Food Inspector filed his complaint in the competent court at Surat. It came to be registered as Criminal Case No.47 of 1984. The charge against the respondent as the accused under sec. 16(1)(a)(i) of the Act was explained to him. He did not plead guilty to the charge. He was thereupon tried. After recording the prosecution evidence and after recording the further statement of the accused under sec. 313 of the Code and after hearing the arguments, by his judgment and order passed on 11th December 1987 in the aforesaid criminal case, the learned Judicial Magistrate (First Class) (Municipal Court) at Surat convicted the accused of the offence with which he was charged and sentenced him to rigorous imprisonment for one year and fine of Rs. 2000 in default further imprisonment for 15 days. That aggrieved the respondent herein. He carried the matter in appeal before the Sessions Court at Surat. It came to be registered as Criminal Appeal No. 2 of 1988. It appears to have been assigned to the learned Additional Sessions Judge for hearing and disposal. By his judgment and order passed on 30th August 1991 in the aforesaid appeal, the learned Additional Sessions Judge maintained the conviction of

the respondent-accused but reduced the sentence to rigorous imprisonment for 7 days and fine of Rs. 2000 in default rigorous imprisonment for 15 days more on the ground that the respondent herein was carrying dairy milk only as a carrier and he was a poor person. The reduction of the sentence by the learned Additional Sessions Judge in appeal aggrieved the prosecution agency. It has therefore invoked the appellate jurisdiction of this Court under sec. 377 of the Code for questioning the correctness of the adequacy of the sentence reduced by the learned appellate Judge as aforesaid. The original complainant was also aggrieved by the reduction of the substantive sentence by the learned appellate Judge. He has therefore invoked the revisional jurisdiction of this Court under sec. 397 read with sec. 401 of the Code for questioning the correctness of the order of sentence passed by the learned Additional Sessions Judge reducing the substantive sentence of imprisonment.

3. The respondent has appeared neither in person nor through any advocate though duly served. This Court has thereupon appointed learned Advocate Kum. R.V. Acharya to represent the respondent in both the appeal and the revision. She has submitted that, on the facts and in the circumstances of the case, the respondent-accused would be entitled to acquittal by this Court in this appeal.

4. Since it would be open to the respondent-accused to plead acquittal in view of sec. 377(3) of the Code, I have thought it fit to deal with the submissions urged before me by learned Advocate Kum. Acharya for the respondent-accused in the first instance.

5. Her first submission is that the necessary quantum of preservative was not used by the Food Inspector while collecting the sample from the respondent-accused. It may be noted that the material on record clearly shows and suggests that 70 decilitre of milk was purchased from the respondent-accused for Rs. 3.50 ps. 70 decilitre would be equivalent to 700 ml. ltr. Under rule 20 of The Prevention of Food Adulteration Rules, 1955 (the Rules for brief) by way of preservative formalin of the strength of 40% has to be added in the ratio of 0.1 ml.ltr. (2 drops) for 25 ml.ltr. of milk collected as sample. It transpires from the complaint of the Food Inspector and his evidence that the quantum of milk to the tune of 7 decilitre (equivalent to 700 ml.ltr.) was divided into three equal parts and in each part were added 19 drops of formalin.

As pointed out hereinabove, the quantum of milk purchased from the respondent-accused by the Food Inspector was 700 ml.ltr. The quantum of preservative to be added therein in accordance with rule 20 of the Rules would be 56 drops. As pointed out hereinabove, the material on record clearly shows that in each part of the sample was added 19 drops of formalin of 40% strength. The total drops of formalin used as preservative would be 57 drops. In that view of the matter, rule 20 of the Rules has clearly been complied with in this case.

6. Learned Advocate Kum. Acharya for the respondent-accused has then urged that the report of the Public Analyst clearly indicates that only two signatures on the slip placed under the seal on the container were found whereas it transpires from the evidence of the complainant that the said slip bore three signatures, one of himself, another of the witness and the third of the vendor of the milk, that is, the respondent-accused. It is true that the report of the Public Analyst mentions about the slip containing the signature of one witness and that of the vendor. It appears that the discrepancy in that regard was not put to the complainant in his cross-examination. If it was put to him in his cross-examination, he might have arranged for examination of the Public Analyst and he might have arranged for production of the slip on the record of the trial so as to bring on record some error on the part of the Public Analyst in deciphering the three signatures on the slip. The complainant's evidence on the point is quite clear that on the slip attached to the container there were three signatures, one of himself, another of the witness and the third of the vendor, that is, the respondent-accused. I think the discrepancy in that regard found on the material on record can be said to be too trivial to upset the conviction in this case.

7. Learned Advocate Kum. Acharya for the respondent-accused has submitted that the ground based on this discrepancy appearing on the record was taken before the appellate court in the memo of appeal but the learned appellate Judge has not dealt with it. That might have been a legitimate grievance on the part of the respondent. It is however everyone's common knowledge that at the time of hearing all the grounds taken in the memo of appeal are not canvassed before the court. It is possible that the said ground was not urged before the appellate court. There is no affidavit by or on behalf of the respondent-accused or his advocate appearing before the learned appellate Judge that the said ground was urged before the appellate court at the time of

hearing of the appeal. In that view of the matter, I am not impressed by the aforesaid submission urged before me by learned Advocate Kum. Acharya for the respondent-accused.

8. The aforesaid submissions were urged on behalf of the respondent-accused for claiming his acquittal in this case. I have found no merit or substance in them or either of them. I think the order of conviction passed by the learned trial Magistrate as affirmed in appeal by the appellate court has to be maintained in this appeal.

9. That brings me to the question of sentence. Section 16 of the Act prescribes the minimum sentence of imprisonment for 6 months and fine of Rs. 1000. Proviso (i) thereof also prescribes the minimum sentence of imprisonment for 3 months and fine of Rs. 500 for some adequate and special reasons. It may be noted that the learned trial Magistrate imposed the minimum sentence on the respondent-accused for the proved offence. The learned Additional Sessions Judge has reduced the sentence merely on the ground that the respondent-accused was carrying dairy milk as a carrier and he was a poor person. It may be noted that this case of his that he was carrying dairy milk was put forward by him in his further statement under sec. 313 of the Code. Thereby he perhaps tried to suggest that the milk carried by him was not for sale but it was for carrying from the milk owner to the dairy and he was acting merely as a carrier. If that be so, he could have explained to the complainant Food Inspector when he was trying to collect by way of purchase sample from him. The respondent-accused could have put that case in the Food Inspector's cross-examination that the milk was not for sale and he was carrying it only as a carrier and no sample need be collected from him or he could have disclosed the name of the owner of the milk. Nothing of the kind appears to have been done by him. In that view of the matter, this ground ought not to have weighed with the learned appellate Judge for reducing the sentence less than the minimum prescribed.

9. So far as the second ground of poverty is concerned, that part does not figure even in the statement of the respondent-accused under sec. 313 of the Code. That appears to be the figment of imagination on the part of the learned appellate Judge. Even otherwise, poverty cannot be considered to be any adequate or special reason for reduction of the substantive sentence of imprisonment. In our country, a vast multitude of people are found living below the

poverty line. If we consider poverty to be an adequate and special reason for awarding a sentence less than the minimum prescribed under the Act qua adulteration in food articles, no one will be able to consume unadulterated articles of food. Every poor person indulging in even petty business activities of selling food articles would take it to be a licence for dealing in adulterated food articles. That could never have been contemplated or visualised by the law-makers so far as the present statute is concerned. I am therefore of the opinion that the learned appellate Judge was not justified in reducing the substantive sentence on the ground of poverty either.

10. In view of my aforesaid discussion, I am of the opinion that the learned appellate Judge clearly went wayward in reducing the substantive sentence of imprisonment awarded by the trial court from rigorous imprisonment for one year to rigorous imprisonment for 7 days. The order of sentence passed in appeal deserves to be quashed and set aside and that passed by the learned trial Magistrate deserves to be restored.

11. That brings me to the revisional application filed by the original complainant for enhancement of the sentence awarded by the leaned appellate Judge to the respondent-accused in his appeal. It is difficult to agree with the submission that the revisional application will not be maintainable in view of the binding ruling of the Supreme Court in the case Eknath Shankarrao Mukkawar v. State of Maharashtra reported in AIR 1977 SC 1177. In that case the Supreme Court has held that the original complainant has no right to invoke the appellate jurisdiction of this Court under sec. 377 of the Code for enhancement of the sentence. It has nowhere been stated that the original complainant cannot invoke the revisional jurisdiction of this Court for enhancement of the sentence. In this connection, a reference deserves to be made to the binding ruling of the Supreme Court in the case of Bachan Singh and others v. State of Punjab reported in AIR 1980 SC 267. It has clerly been held therein that the original complainant can move the High Court in revision under sec. 401 of the Code for enhancement of the sentence awarded by the lower court. The aforesaid ruling of the Supreme Court in the case of Bachan Singh (supra) is binding to this Court. In that view of the matter, the revisional application at the instance of the original complainant will have to be held as maintainable.

12. It is however not necessary to accept the revisional application in view of the fact that the

appeal preferred by the prosecution agency has been accepted as aforesaid. In that view of the matter, the revisional application deserves to be rejected.

13. In the result, this appeal is accepted. The order of substantive sentence of rigorous imprisonment for 7 days passed by the learned Additional Sessions Judge at Surat in Criminal Appeal No. 2 of 1988 is quashed and set aside and the order of substantive sentence of rigorous imprisonment for one year passed by the learned Judicial Magistrate (First Class (Municipal Court) at Surat in Criminal Case No. 47 of 1984 is restored. The order of fine remains unchanged.

14. The revisional application fails. It is hereby rejected.
